

**STATE OF MINNESOTA**

**IN SUPREME COURT**

C2-95-1476

**ORDER PROMULGATING RULE ON  
PUBLIC ACCESS TO RECORDS RELATING TO  
OPEN JUVENILE PROTECTION PROCEEDINGS**

WHEREAS, by order dated January 22, 1998, this Court established a three year pilot project authorizing open hearings in juvenile protection proceedings and appointed an advisory committee to consider and recommend rules regarding public access to records relating to open juvenile protection hearings; and

WHEREAS, the Advisory Committee on Open Hearings in Juvenile Protection Proceedings has filed its Final Report, dated April 15, 1998, recommending adoption of a Proposed Rule on Public Access to Records Relating to Open Juvenile Protection Hearings ("Proposed Rule"); and

WHEREAS, by order dated April 15, 1998, this Court established a May 15, 1998 deadline for submission of comments on the Proposed Rule; and

WHEREAS, the Court has reviewed the comments and is advised in the premises.

NOW, THEREFORE, by virtue of and under the inherent power and statutory authority of the Minnesota Supreme Court to regulate public access to records and proceedings of the judicial branch, IT IS HEREBY ORDERED that:

1. The attached Rule on Public Access to Records Relating to Open Juvenile Protection Proceedings, be, and the same hereby is, prescribed and promulgated to be effective as directed therein.
2. The inclusion of Advisory Committee comments is made for convenience and does not reflect court approval of the comments made therein.

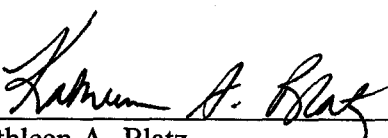
Dated: May 26, 1998

By the Court:

OFFICE OF  
APPELLATE COURTS

MAY 29 1998

**FILED**

  
Kathleen A. Blatz  
Chief Justice

## **Rule on Public Access to Records Relating to Open Juvenile Protection Proceedings**

### **Subdivision 1. Presumption of Public Access to Records.**

Except as otherwise provided in this rule, all case records relating to the pilot project on open juvenile protection proceedings are presumed to be accessible to any member of the public for inspection, copying, or release. For purposes of this rule, "open juvenile protection proceedings" are all matters governed by the juvenile protection rules promulgated by the Minnesota Supreme Court.

### **Subdivision 2. Effective Date.**

All case records deemed accessible under this rule and filed on or after June 22, 1998, shall be available to the public for inspection, copying, or release. All case records deemed accessible under this rule and filed prior to June 22, 1998, shall not be available to the public for inspection, copying, or release.

### **Subdivision 3. Applicability of Rules of Public Access to Records of the Judicial Branch.**

Except where inconsistent with this rule, the Rules of Public Access to Records of the Judicial Branch promulgated by the Minnesota Supreme Court shall apply to records relating to open juvenile protection proceedings. Subdivisions 1(a) and 1(c) of Rule 4 of the Rules of Public Access to Records of the Judicial Branch, which prohibit public access to domestic abuse restraining orders and judicial work products and drafts, are not inconsistent with this rule.

### **Subdivision 4. Records That Are Not Accessible to the Public.**

Except for exhibits identified in subdivision 5 of this rule, the following case records relating to open juvenile protection proceedings shall not be accessible to the public:

(a) transcripts, stenographic notes and recordings of testimony of anyone taken during portions of proceedings that are closed by the presiding judge;

(b) audio tapes or video tapes of a child alleging or describing physical abuse, sexual abuse, or neglect of any child;

(c) victim's statements;

(d) portions of juvenile court records that identify reporters of abuse or neglect;

(e) HIV test results;

(f) medical records and chemical dependency evaluations and records, psychological evaluations and records, and psychiatric evaluations and records;

(g) sexual offender treatment program reports;

(h) portions of photographs that identify a child;

(i) application for ex parte emergency protective custody order, and any resulting order, until the hearing where all parties have an opportunity to be heard on the custody issue, provided that, if the order is requested in a CHIPS petition, only that portion of the petition that requests the order shall be deemed to be the application for purposes of this section (i);

(j) records or portions of records that specifically identify a minor victim of an alleged or adjudicated sexual assault;

(k) notice of pending court proceedings pursuant to 25 U.S.C. § 1912 (the Indian Child Welfare Act);

(l) records or portions of records which the court in exceptional circumstances has deemed inaccessible to the public; and

(m) records or portions of records that identify the home or institution in which a child is placed pursuant to a foster care placement, pre-adoptive placement, or adoptive placement.

**Subdivision 5. Access to Exhibits.**

Case records received into evidence as exhibits shall be accessible to the public unless subject to a protective order.

**Subdivision 6. Access to Court Information Systems.**

Except where authorized by the district court, there shall be no direct public access to juvenile court case records maintained in electronic format in court information systems.

**Subdivision 7. Protective Order**

Upon motion and hearing, a court may issue an order prohibiting public access to juvenile court case records that are otherwise accessible to the public when the court finds that there are exceptional circumstances supporting issuance of the order. The court may also issue such an order on its own motion and without a hearing pursuant to subdivision 4(l) of this rule, but shall schedule a hearing on the order as soon as possible at the request of any person.

**Subdivision 8. Case Captions.**

All juvenile protection files opened in a pilot project county on and after June 22, 1998, shall be captioned in the name of the parent(s) or the child's legal custodian or legal guardian as follows: "In the matter of child(ren) of \_\_\_\_\_, parent/legal guardian/legal custodian."

**Subdivision 9. Statutes Superseded.**

Minnesota Statutes, section 260.161, subdivision 2, as amended by 1998 Minn. Laws, chapter 406, article 1, section 28 and 1998 Minn. Laws chapter 407, article 9, section 27, and all other statutes inconsistent or in conflict with this rule are superseded insofar as they apply to public access to records of open juvenile protection proceedings.

Advisory Committee Comment-1998

Under subdivision 1, application of this rule is limited to case records of the pilot project on open juvenile protection proceedings, which includes all proceedings identified in Rule 37 of the Minnesota Rules of Juvenile Procedure (1997) and any successor provision. *See Order Establishing Pilot Project On Open Hearings In Juvenile Protection Matters, #C2-95-1476* (Minn. S. Ct. filed

Jan. 22, 1998). Rule 37 as currently written does not include adoption proceedings. Thus, this rule would not apply to any case records relating to adoption proceedings. The Committee is aware that the juvenile protection rules are in the process of being updated by another advisory committee. To the extent that there are substantive changes made to Rule 37, those changes would effect the pilot project.

Subdivision 1 establishes a presumption of public access to juvenile court case records, and exceptions to this presumption are set forth in the remaining subdivisions. Subdivision 2 specifies the effective date of the pilot project as the cut off for public access. Case records deemed accessible under this rule and filed on or after June 22, 1998, shall be available to the public for inspection, copying, or release. Case records filed prior to June 22, 1998, shall not be available to the public for inspection, copying, or release under this rule; public access to these records is governed by existing rules and statutes.

Subdivision 3 incorporates the provisions of the Rules of Public Access to Records of the Judicial Branch promulgated by the Minnesota Supreme Court ("Access Rules"), except to the extent that the Access Rules are inconsistent with this rule. The Access Rules establish the procedure for requesting access, the timing and format of the response, and an administrative appeal process. The Access Rules also define "case records" as a subcategory of records maintained by a court. Thus, "case records" would not include items that are not made a part of the court file, such as notes of a social worker or guardian ad litem. Aggregate statistics on juvenile court cases that do not identify any participants or a particular case are included in the "administrative records" category and are accessible to the public under the Access Rules. Such statistics are routinely published by the courts in numerous reports and studies. These procedures and definitions are consistent with this rule.

One significant aspect of both this rule and the Access Rules is that they govern public access only. Participants in a juvenile protection case may have greater access rights than the general public. *See, e.g.,* Minn.R.Juv.P. 64.02, subdivision 2 (1997).

Subdivision 3 preserves the confidentiality of domestic abuse restraining orders issued pursuant to Minn. Stat. § 518B.01 (1996). The address of a petitioner for a restraining order under section 518B.01 must not be disclosed to the public if nondisclosure is requested by the petitioner. Minn. Stat. § 518B.01, subd. 3b (1996). All other case records regarding the restraining order must not be disclosed until the temporary order made pursuant to subdivision 5 or 7 of section 518B.01 is served on the respondent. Access Rule 4, subdivision 1(a) (1998).

Subdivision 3 prohibits public access to judicial work products and drafts. These include

notes, memoranda and drafts prepared by a judge or court employed attorney, law clerk, legal assistant or secretary and used in the process of preparing a decision or order, except the official court minutes prepared pursuant to Minn. Stat. § 564.24-.25 (1996). Access Rule 4, subd. 1(c) (1998).

The court services provision of Rule 4, subdivision 1(b) of the Access Rules, is inconsistent with this rule. The advisory committee is of the opinion that public access to reports and recommendations of social workers and guardians ad litem, which become case records, is an integral component of the increased accountability that underlies the pilot project. Court rulings will necessarily incorporate significant portions of what is set forth in those reports, and similar information is routinely disclosed in family law cases.

Subdivision 4(a) prohibits public access to testimony of anyone taken during portions of a proceeding that are closed by the presiding judge. The Supreme Court has directed that hearings under the pilot project may be closed or partially closed by the presiding judge only in exceptional circumstances. *Order Establishing Pilot Project On Open Hearings In Juvenile Protection Matters*, #C2-95-1476 (Minn. S. Ct. filed Jan. 22, 1998).

Subdivision 4(b) prohibits public access to audio tapes and video tapes of a child alleging or describing physical abuse, sexual abuse, or neglect of any child. This includes all tapes made pursuant to Minn. Stat. § 626.561, subd. 3 (1996) during the course of a child abuse assessment, criminal investigation, or prosecution. This is consistent with Minn. Stat. § 13.391 (1996), which prohibits an individual who is a subject of the tape from obtaining a copy of the tape without a court order. *See also In re Application of KSTP Television v. Ming Sen Shiue*, 504 F.Supp. 360 (D.Minn. 1980) (television station not entitled to view and copy 3 hours of video tapes received in evidence in criminal trial). Similarly, subdivision 4(c) prohibits public access to victims' statements, and this includes written records of interviews of victims made pursuant to Minn. Stat. § 626.561, subd. 3 (1996). This is consistent with Minn. Stat. §§ 609.115, subds. 1, 5; 609.2244; 611A.037 (1996 and 1997 Supp.) (pre-sentence investigations to include victim impact statements; no public access; domestic abuse victim impact statement confidential).

Although victims' statements and audio tapes and video tapes of child alleging or describing abuse or neglect are inaccessible to the public under subdivisions 4(b) and 4(c), this does not prohibit the attorneys for the parties or the court from including information from the statements or tapes in the petition, court orders, and other documents that are otherwise accessible to the public. In contrast, subdivision 4(d) prohibits public access to "information identifying reporters of abuse or

neglect." By precluding public access to "information" identifying reporters of abuse or neglect, the advisory committee did not intend to preclude public access to any other information included in the same document. Thus, courts and court administrators must redact identifying information from otherwise publicly accessible documents and then make the edited documents available for inspection and copying by the public. Similarly, subdivision 4(e) requires that courts and court administrators redact from any publicly accessible juvenile court record any reference to HIV test results, and subdivision 4(h) requires administrators to redact the face or other identifying features in a photograph of a child.

The prohibition of public access to the identity of reporters of abuse or neglect under subdivision 4(d) is consistent with state law governing access to this information in the hands of social services, law enforcement, court services, schools and other agencies. Minn. Stat. § 626.556 (1996 and Supp. 1997). Subdivision 4(d) is also intended to help preserve federal funds for child abuse prevention and treatment programs. *See* 42 U.S.C. §§ 5106a(b)(2)(A); 5106a(b)(3) (1998); 45 C.F.R. §§ 1340.1 to 1340.20 (1997). Subdivision 4(d) does not, however, apply to testimony of a witness taken during a proceeding that is open to the public.

Subdivision 4(e) prohibits public access to HIV test results. This is consistent with state and federal laws regarding court ordered testing for HIV. Minn. Stat. § 611A.19 (1996) (defendant convicted for criminal sexual conduct; no reference to the test, the motion requesting the test, the test order, or the test results may appear in the criminal record or be maintained in any record of the court or court services); 42 U.S.C. 14011 (1998) (defendant charged with crime; test result may be disclosed to victim only). The Committee is also aware that federal funding for early intervention services requires confidential treatment of this information. 42 U.S.C. §§ 300ff-61(a); 300ff-63 (1998).

Subdivisions 4(f) and 4(g) prohibit public access to medical records, chemical dependency evaluations and records, psychological evaluations and records, psychiatric evaluations and records and sex offender treatment program reports, unless admitted into evidence (see subdivision 5). This is consistent with public access limitations in criminal and juvenile delinquency proceedings that are open to the public. *See, e.g.*, Minn. Stat. § 609.115, subd. 6 (1996) (presentence investigation reports). Practitioners and the courts must be careful not to violate applicable federal laws. Under 42 U.S.C. § 290dd-2 (1998), records of all federally assisted or regulated substance abuse treatment programs, including diagnosis and evaluation records, and all confidential communications made therein, except information required to be reported under a state mandatory child abuse reporting

law, are confidential and may not be disclosed by the program unless disclosure is authorized by consent or court order. Thus, practitioners will have to obtain the relevant consents or court orders, including protective orders, before disclosing certain medical records in their reports and submissions to the court. See 42 C.F.R. §§ 2.1 to 2.67 (1997) (comprehensive regulations providing procedures that must be followed for consent and court-ordered disclosure of records and confidential communications).

Although similar requirements apply to educational records under the Federal Educational Rights and Privacy Act (FERPA), 20 U.S.C. §§ 1232g, 1417, and 11432 (1998); 34 C.F.R. §§ 99.1 to 99.67 (1997), FERPA allows schools to disclose education records without consent or court order in certain circumstances, including disclosures to state and local officials under laws in effect prior to November 19, 1974. 20 U.S.C. § 1232g(b)(1)(E)(i) (1998); 34 C.F.R. § 99.31(a)(5)(i)(A) (1997). Authorization to disclose truancy to the county attorney, for example, was in effect prior to that date and continues under current law. See Minn. Stat. § 120.12 (1974) (superintendent to notify county attorney if truancy continues after notice to parent); 1987 Minn. Laws ch. 178, § 10, (repealing section 120.12 and replacing with current section 120.103, which adds mediation process before notice to county attorney); see also Minn. Stat. §§ 260A.06-.07 (1996) (referral to county attorney from school attendance review boards; county attorney truancy mediation program notice includes warning that court action may be taken). Practitioners will have to review the procedures under which they receive education records from schools and, where necessary, obtain relevant consents or protective orders before disclosing certain education records in their reports and submissions to the court. Additional information regarding FERPA may be found in *Sharing Information: A Guide to the Family Educational Rights and Privacy Act and Participation in Juvenile Justice Programs* (U.S. Dept. of Justice, Office of Juvenile Justice and Delinquency Prevention, Washington, D.C. 20531, June 1997) (includes hypothetical disclosure situations and complete set of federal regulations).

Subdivision 4(h) requires administrators to redact the face or other identifying features in a photograph of a child before permitting public access. Any appropriate concern regarding public access to the remaining portions of such a photograph can be addressed through a protective order (see Subdivision 7).

Subdivision 4(i) precludes public access to an ex parte emergency protective custody order, until the hearing where all parties have an opportunity to be heard on the custody issue. This provision is designed to reduce the risk that a parent, guardian, or custodian would try to hide a child before the child can be placed in protective custody or to take the child from custody before the court



can hear the matter. *See. e.g.,* Minn.R.Juv.P. 51 (1997) (order must either direct that child be brought immediately before the court or taken to a placement facility designated by the court; parent, guardian and custodian, if present when child is taken into custody, shall immediately be informed of existence of order and reasons why child is being taken into custody). Subdivision 4(i) also precludes public access to the application or request for the protective custody order, except that if the request is made in a CHIPS petition, only that portion of the petition that requests the order is inaccessible to the public.

Subdivision 4(j) precludes public access to portions of records that specifically identify a minor victim of sexual assault. This will require court administrators to redact information from case records that specifically identifies the minor victim, including the victim's name and address. Subdivision 4(j) does not preclude public access to other information in the particular record. This is intended to parallel the treatment of victim identities in criminal and juvenile delinquency proceedings involving sexual assault charges under Minn. Stat. § 609.3471 (1996). Thus, the term "sexual assault" includes any act described in Minnesota Statutes, sections 609.342, 609.343, 609.344, and 609.345. The Committee considered using the term "sexual abuse" but felt that it was a limited subcategory of "sexual assault." *See* Minn. Stat. § 626.556, subd. 2(a) (1996) ("sexual abuse" includes violations of 609.342-345 committed by person in a position of authority, responsible for child's care, or having a significant relationship with the child). Subdivision 4(j) does not require a finding that sexual assault occurred. An allegation of sexual assault is sufficient.

Subdivision 4(k) precludes public access to the notice of pending proceedings given to an Indian child's tribe or to the Secretary of the Interior pursuant to 25 U.S.C. § 1912(a) (1998). The notice includes extensive personal information on the child, including all known information on direct lineal ancestors, and requires parties who receive the notice to keep it confidential. 25 C.F.R. § 23.11(d), (e) (1997). Notices are routinely given in doubtful cases because lack of notice can be fatal to a state court proceeding. *See* 25 U.S.C. § 1911 (1998) (exclusive jurisdiction of tribes; right to intervene; transfer of jurisdiction). The Committee felt that public access to information regarding the child's tribal heritage is appropriately given whenever a tribe intervenes or petitions for transfer of jurisdiction. Subdivision 4(k) does not preclude public access to intervention motions or transfer petitions.

Subdivision 4(l) recognizes that courts may, in exceptional circumstances, issue protective orders precluding public access to certain records or portions of records. Exceptional circumstances is the standard promulgated by the Supreme Court for closure of portions of proceedings. *See Order*

*Establishing Pilot Project On Open Hearings In Juvenile Protection Matters, #C2-95-1476* (Minn. S. Ct. filed Jan. 22, 1998) Records of closed proceedings are inaccessible to the public under subdivision 4(a). Procedures for issuing protective orders are set forth in Subdivision 7.

Subdivision 4(m) prohibits public access to identifying information (i.e., names, addresses, etc.) of foster parents, foster care institutions, and adoptive parents, and other persons and institutions providing pre-adoptive care of the child. This is consistent with the confidentiality accorded adoption proceedings. It is also designed to reduce the risk of continuing contact by someone whose parental rights have been terminated or who is a potentially dangerous family member.

Notwithstanding the list of inaccessible case records in subdivision 4(a) through 4(m), many case records of the pilot project will typically be accessible to the public. Examples include: petitions other than petitions for paternity; summons; affidavits of publication or service; certificates of representation; orders; hearing and trial notices; subpoenas; names of witnesses; motions and supporting affidavits and legal memoranda; transcripts; and reports of a social worker or guardian ad litem. With the exception of information that must be redacted under subdivisions 4(d), 4(e) and 4(h), these records will be accessible to the public notwithstanding that they contain a summary of information derived from another record that is not accessible to the public. For example, a social services or court services report recommending placement might discuss the results of a chemical dependency evaluation. Although the chemical dependency evaluation is not accessible to the public, the discussion of it in the social services or court services report need not be redacted prior to public disclosure of the report. Finally, it must be remembered that public access under this rule would not apply to records filed with the court prior to the effective date of the pilot project (see subdivision 2) or to reports of a social worker or guardian ad litem that have not been made a part of the court file (see subdivision 3).

Subdivision 5 of this rule permits public access to records that have been received in evidence as an exhibit, unless the records are subject to a protective order (see subdivision 7). Thus, any of the records identified in subdivisions 4(b) through 4(k) that have been admitted into evidence as an exhibit are accessible to the public, unless there is a protective order indicating otherwise. An exhibit that has been offered, but not expressly admitted by the court, does not become accessible to the public under subdivision 5. Exhibits admitted during a trial or hearing must be distinguished from items attached as exhibits to a petition or a report of a social worker or guardian ad litem. Merely attaching something as an "exhibit" to another filed document does not render the "exhibit" accessible to the public under subdivision 5.

Subdivision 6 prohibits direct public access to case records maintained in electronic format in court information systems unless authorized by the court. Subdivision 6 intentionally limits access to electronic formats as a means of precluding widespread distribution of case records about children into larger, private databases that could be used to discriminate against children for insurance, employment, and other purposes. This concern also led the Committee to recommend that case titles in the petition and other documents include only the names of the parent or other guardian, and exclude the names or initials of the children (see subdivision 8). Subdivision 6 allows the courts to prepare calendars that identify cases by the appropriate caption. To the extent that court information systems can provide appropriate electronic formats for public access, subdivision 6 allows the court to make those accessible to the public, for example, by order of the chief judge of the judicial district.

Subdivision 7 establishes two categories of protective orders. One is made on motion of a party after a hearing, and the other is made on the court's own motion without a hearing, subject to a later hearing if requested by any person, including representatives of the media. In any case, a protective order may issue only in exceptional circumstances. *See Order Establishing Pilot Project On Open Hearings In Juvenile Protection Matters, #C2-95-1476* (Minn. S. Ct. filed Jan. 22, 1998). The advisory committee felt that these procedures would provide adequate protection and flexibility during the pilot project.

The change in case captions under Subdivision 8 is designed to minimize the stigma to children involved in open juvenile protection proceedings. It is more appropriate to label these cases in the name of the adults involved, who are often the perpetrators of abuse or neglect.